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# appeals news

Massachusetts Department of Education  
Bureau of Special Education Appeals

Volume 5

Fall 1980

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Publication #12165, approved by John J. Manton, *Acting State Purchasing Agent*.

## EDITOR'S NOTE

Since this issue of *Appeals News* will be going to press after Editor Lydia Sinclair has left us to return to her native England, I think it only proper that we dedicate this issue to her for all of the fine work she has done in the past as the original editor. Before she left, she worked with me to explain what had to be done. Together, we gathered the articles that are included in this issue. Lydia is also responsible for writing the case notes included in the following pages. Lydia, we wish for you only the very best in your native England.

RCB — Co-Editor

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# **SPECIAL EDUCATION APPEALS URBAN INFORMATION PROJECT**

The Special Education Appeals Urban Information Project has been functioning since October 1977. The purpose of this project is to provide training and technical assistance in due process rights from referral through appeal under Chapter 766 and Public Law 94-142, to parents, community organizations, public school personnel and human service agencies. Particular emphasis has been placed on reaching linguistic and English speaking minority parents.

For 1979-1980, the Urban Information Project has focused on the following twelve urban areas: Boston, Chelsea, Woburn, Lynn, Fall River, New Bedford, Leominster, Fitchburg, Lawrence, Lowell, Northampton, and Worcester. The project provided twelve training sessions for public school personnel with a total of 408 participants, and 61 training sessions for parents and community groups with a total of 1,564 participants.

Workshops this year have been geared to smaller groups of parents and broken down into separate sessions to allow for enough time to be spent on specific problems facing individual parents. To effectively reach parents of children with special education needs within the hispanic community the project tries to identify several key parents in each town who can help to reach a much larger network of parents. Many minority parents are hesitant about coming forward with problems they are having with their children or schools and respond more readily to the workshops if they are first contacted by another parent whom they know from their community. So far, this method of using parents to reach other parents has proven the most direct way of contacting the people who have the greatest need of information on Chapter 766 and Public Law-94-142.

This year several television and radio programs have been done dealing with Chapter 766. These are usually talk programs which deal with social and educational issues facing English speaking and linguistic minorities. Of particular success was a talk show called "ECO" on Channel 7, on which the project director appeared with a panel of several hispanic parents who have children with special needs. The show which is presented in Spanish, featured a brief discussion of Chapter 766 and a question and answer session. The show was extremely effective in reaching hispanic parents who previously had no knowledge of special education laws. The show was aired twice and as many as 78 calls followed each airing. In April 1980, Channel 5 aired "City Streets" a program dealing with parents' rights. The Project Director appeared with Carol Kervick, Director of the Bureau of Special Education Appeals. The response to the program was excellent and many calls were placed from many towns throughout Massachusetts looking for general information and answers to specific cases.

As a new facet of the Urban Information Project, a series of workshops is being planned for probation officers and other staff of the juvenile courts in the Greater Boston area. The first of these sessions was held in January in conjunction with the juvenile division of the Roxbury District Court. A panel representing the Bureau of Special Education Appeals and the Child Search Complaint Management System presented information on Chapter 766 and Public Law 94-142 to probation officers, and community social workers. There appeared to be a lack of knowledge of special education laws and the rights offered to parents and children over 16 among social workers connected with the courts. Since many juvenile offenders have special education needs, the response to the workshop was excellent.

Due to a successful series of workshops in Chelsea last summer with teenage youth groups, more such programs are being planned for this year. Workshops on their special education rights are valuable not only to these teenagers in dealing with their own educational needs but also to pass information on to parents to help younger brothers and sisters.

Overall, response to the workshops of the Urban Information Project has seen a marked improvement this past year. This is due in part to the better networks of information that have gradually been set up. There still remain many serious problems facing minority parents when dealing with the complicated educational issues of their children. The most common complaints appear to be about the poor communication link with the schools. Written communications from many schools still come to the parents in English rather than Spanish, Portuguese, etc., making a complicated process yet more confusing. There is also a serious lack of legal resources for low income and linguistic minority parents to turn to when attempting to resolve special education issues with the schools. This discourages many parents from following through with their cases. These problems will take time to resolve and the project is attempting to alleviate some of them with referral work for the parents.

The Urban Information Project has accomplished a great deal since the program began. Many school professionals and parents, along with community groups have been trained, but there remain many people unaware of special education laws and the rights guaranteed under them.

Nelly Sepulveda Rathmill  
*Project Coordinator*

# CALENDAR — URBAN INFORMATION PROJECT

## Scheduled Workshops

Woburn - Special Education Teachers Workshops	10/15/80
Hudson - Bi-lingual Teachers Workshop	10/16/80
Regis College - Special Education Program	
Bi-lingual Teachers Workshop	10/30/80
Waltham - Spanish Speaking Parents Workshop	11/06/80
Hudson - Portuguese Speaking Parents Workshop	11/09/80
Woburn - Special Education Teachers Workshop	11/12/80
New Bedford - Community Organizations Workshop	11/18/80
Waltham - Parents Workshop	11/19/80
Lowell - Portuguese Speaking Parents Workshop	11/20/80
Waltham - Parents Workshop	11/26/80
Woburn - Special Education Teachers Workshop	12/10/80

Albert J. et al

v.

**SCHOOL COMMITTEE OF NEWTON**

(and a companion case)

Appeals Court of Massachusetts, Suffolk

Argued January 11, 1980

**Decided February 28, 1980**

Parents sought reimbursement for tuition costs for their son's private schooling commencing in September 1975, which they claim was necessitated by failure of school committee to provide adequate special education plan for him under statutory provisions and applicable regulations. The Supreme Court, Sullivan J., denied relief, and parents appealed. The Appeals Court, Suffolk County, Greaney, J., held that in light of complexity and novelty of statutory and regulatory schemes when school committee performed student's intermediate evaluation, committee's good-faith efforts to provide student the education to which he was entitled, and demonstrably compelling conclusion from record that team for a full-core evaluation would have proposed a plan much like that accepted by hearing officer, no prejudice resulted to parents by student's receiving intermediate core evaluation instead of full-core evaluation requested by his parents.

**Affirmed.**

## Schools

In light of complexity and novelty of statutory and regulatory schemes when school committee performed student's intermediate evaluation, committee's good-faith efforts to provide student the education to which he was entitled, and demonstrably compelling conclusion from record that team for a full-core evaluation would have proposed a plan much like that accepted by hearing officer, no substantial right of student's parents was prejudiced by student's receiving intermediate core evaluation instead of full-core evaluation requested by parents. M.G.L.A. c. 71B ss 1 et seq., 2, 3.



# EDUCATIONAL ADVOCATE (SURROGATE PARENT) PROGRAM

Public Law 94-142 and Massachusetts Chapter 766 encourage and emphasize the participation of parents in the development and monitoring of the education program of a special needs child. For those children who are in the custody of a human service agency, or whose parents are unknown or unavailable to participate in the child's educational planning, the "parent" may be the child's biological or adoptive parent (or other family member fulfilling that role), a social worker or case worker, a foster parent or an appointed Educational Advocate.

Presently in Massachusetts, many special needs children in the custody of the human service agencies are being represented by their social workers or case workers in the educational process. It is unclear whether or not this will continue to be the case. The Federal Office of Special Education and Rehabilitation is presently considering the appropriateness of this practice and we are expecting a ruling from them to be forthcoming. Until that time, we are accepting social workers and case workers as appropriate adults to act in the child's behalf.

The Department of Social Services has recently begun to authorize foster parents to act in behalf of individual children in educational matters, if the foster parent is willing and able to do so. This is done by the signing of a contract between the Department of Social Services and the foster parent agreeing to give the foster parents the right and responsibility to act in behalf of the child in educational matters. At this time most children in the custody of the Department of Social Services are being represented by their foster parents.

In the case that neither the child's social worker nor foster parents are able or willing to serve in this capacity, an Educational Advocate is needed. According to the law, an Educational Advocate must be someone who is:

- a) an adult
- b) not an employee of a public educational agency
- c) has no interest that conflicts with the interests of the child
- d) has knowledge and skills that insure adequate representation of the child.

Once appointed, an Educational Advocate has all the rights and responsibilities given to a parent by Chapter 766 and Public Law 94-142 in educational matters and is expected to:

- a) advocate for the child in educational planning
- b) request and participate in Evaluation TEAM meeting (including giving consent for evaluation)
- c) accept or reject the Individual Education Plan (IEP)
- d) take the case through the special education appeals process.

Clearly, these duties and rights are only in the area of education, but because the term "surrogate parent" connotes more than this, some confusion has arisen. In order to clarify the role of a surrogate parent, they are now referred to as Educational Advocates. We have found also that for the children being represented the term Surrogate parent creates unrealistic and emotional expectations which we want to avoid. Altogether the term Educational Advocate is clearer, less emotional and more precise.

An Educational Advocate is matched with an eligible child in one of two ways. In many cases there may be a person who has been involved with the child and who would be willing and able to serve as the child's Educational Advocate. This person is then trained in the Special Education laws and in the role of an Educational Advocate. If there is no person available who is involved with the child, a person will be selected from among the "pool" of recruited and trained Educational Advocates whose knowledge and approximate geographic location best matches the needs and area of current placement of the child.

Once an Educational Advocate has been matched with the child, the Associate Commissioner of Special Education or the Commissioner of the human service agency having custody of the child makes an official appointment in writing and all parties involved with the child are notified of the appointment. The Educational Advocate then assesses the child's situation and acts accordingly. The staff of the Educational Advocate (Surrogate Parent) Program are available at all times to offer assistance to the educational advocates, to monitor the overall process and to provide additional training if necessary.

Since the program was implemented in September 1978, fifty-five Educational Advocates have been appointed. Within the next six months another fifty Educational Advocates are expected to be appointed. If at sometime in the future, the Federal Office of Special Education and Rehabilitation rules that it is not appropriate for social workers to be acting in behalf of children in educational matters, there may be as many as 1,500 children who will then be in need of an Educational Advocate.

Anyone with knowledge of a child who may be in need of an Educational Advocate or anyone interested in more information about the Educational Advocate Program please contact:

Betsy Burch or Paula Gauthier  
Educational Advocate Program  
Division of Special Education  
31 St. James Avenue  
Boston, Massachusetts 02116  
Telephone — (617) 727-8534

## **CASE STUDY**

The following are summaries of two cases heard on appeal before the Bureau of Special Education Appeals during 1980. Both cases concern adolescent students who have attended public school programs for the majority of their school years and have received special education services under education plans implemented by the public school systems. In both cases the adequacy of previous special education services provided by the public school is an issue. Parents, in both cases, have placed the child in a private school program alleging the current education plan offered by the public school is inadequate and that past education plans were inadequate. In one case a finding is made for the 502.5 prototype initiated by parents and in one case a finding is made for the 502.4 program offered by the LEA. In neither case is the issue of adequacy of prior education plans crucial to the decision.

### **Case I — BSEA #2827 — Nils A.**

A finding for the 502.5 prototype program proposed by the parents of a child who is brain damaged and who has delayed academic skills.

#### **Summary of the case.**

Nils is an 18 year old boy has attended the public school system since grade 1. Special education services were provided by the public school in grades 4 through 8. In grade 9 he was placed in a 502.3 program in a vocational technical school and given resource room help with academic subjects and speech therapy. In grade 10, 1978-1979 school year under dispute, the public school proposed a 502.3 program in a vocational technical high school with resource room help in a small group (6 hours per week), speech therapy, counseling and vocational training.

Nils' parents rejected this IEP for the following reasons:

1. academic instruction was not provided on a daily basis
2. class size was too large
3. the child had been placed in a similar program the previous year and was unsuccessful. Specifically he had been given assignments above his academic level which had caused him frustration and he had difficulty with peer relationships
4. the child should be placed in a vocational program only when appropriate functional reading level had been achieved.

In September 1979 his parents placed Nils in Leland Hall, a 766 approved 502.5 prototype where he remains at the date of hearing.

#### **Issues in Dispute**

The school committee asserts that intensive academic remediation should play a secondary role to the acquisition of vocational skills at this point in Nils' education. The committee argues that Nils has at this age, 18, reached a ceiling vis a vis academic progress and they view preparation for self-sufficiency in the working world as the most appropriate path to pursue at this time and the one offering the greatest chance of success.

Nils' parents argue that intensive academic remediation toward the goal of literacy is the top priority for him at this time and while acquisition of vocational skills is desirable it is secondary until literacy is attained.



## **Evidence Presented**

Evaluation and assessments indicate Nils reading level in grade 6 (1974-1975 )was early second to early third grade level and his IQ in 1974 was measured as verbal 74, performance 93. Teacher reports of 1977-1978 state that Nils experienced frustration in class and was still functioning at a grade 2 reading level.

A core evaluation conducted in the fall of 1978 showed Nils to be functioning at a 2.3 grade level in instructional and independent reading; 4.3 grade level in auditory comprehension and a 4.3 grade level in Math. Speech and language deficits are noted and a neurological examination is recommended.

An independent evaluation conducted in March 1979 states that Nils is anxious and depressed over interpersonal relationships and withdraws and retreats.

Individual and family counseling is recommended and Nils is assessed as having the following grade level skills:

Reading — 2.0  
Spelling — 2.5  
Arithmetic — 4.4  
Key Math — 4.5  
Bender — 2.0  
Mental age — 12.7

The evaluation recommends a substantially separate program in a very small school and a “total environment.” A neurological consultation of September 1979 showed neurological impairment and damaged language functioning. Recommendations are — individual daily reading program and adaption of the regular curriculum. The neurologist does not predict whether Nils will be able to achieve a higher reading level. Neuropsychological Evaluation of October 1979 states that Nils has a low normal IQ and is brain damaged. Skill levels in academics are stated to be on an early second grade to early fourth grade level. The report recommends that priority be given to skill development in critical academic areas. Testimony offered at the hearing by the neuropsychologist concluded that there was no reason to believe that Nils would not benefit from a special education program and in his professional opinion Nils was able to achieve literacy.

Testimony presented by a behavioral neurologist indicated the following:

1. Nils had experienced brain damage during the neo-natal period
2. Educational and vocational programs should be explored for him
3. Test results indicated that he had reached a saturation point and would not profit from intensive speech and language and reading work.
4. Progress from intensive speech and language therapy would be low and frustration high
5. Nils was not likely to reach a 4th or 5th grade reading level
6. If such level was reached it could not be retained
7. Intensive programming was not recommended because prior years of such work showed no substantial success.

Testimony about the nature and content of the Leland Hall program and Nils' progress there indicated he was making good progress.

Nils himself testified that he feels he is experiencing success at Leland Hall.

Public School personnel testified that a 502.4 program was available for Nils and this was offered for him although the school committee takes the position that vocational education should be the principle program for him.

## **Findings and Conclusions**

1. Nils is a child with special needs as defined for the purposes of the law
2. The education program at Leland Hall, a 502.5 prototype, is the least restrictive adequate and appropriate program for Nils for the period September 1979 — June 1980 and tuition and transportation costs for this period should be the responsibility of the LEA.

## **Conclusions**

1. Nils should be offered the opportunity for further academic development
2. It would be unjustified to preclude the possibility of achievement to literacy levels
3. The severity of his deficits in reading, language, arts and speech, particularly in view of his age, requires a program which emphasizes intensive academic remediation in the areas of deficit.

## **Rationale**

All evaluations agree that Nils has severe deficiencies in reading, language, arts, speech, and math. Argument that his neurological impairment renders him incapable of further academic achievement is rejected as speculative and not based on direct evaluation of and contact with Nils. No teacher testified that he could not progress further and argument is made for specialized academic intervention for Nils by evaluators who personally examined and tested him.

The hearing officer concludes "every legitimate option should be exhausted before any child is relegated to a life of functional illiteracy." Evidence indicates that Nils is making progress in the Leland Hall program, an option which has not yet been tried for him.

There is no evidence to indicate that vocational skills could not be acquired at a later time with equal facility.

The hearing officer rejects the alternative 502.4 program offered by the public school for the following reasons:

1. It does not provide an appropriate peer group for continued social and psychological adjustment
2. It comes too late in the day, after his parents took the step of placing him in Leland Hall and a change now would disrupt his academic program where he is experiencing success.

## **Case II — BSEA #2755 — Brian F.**

A finding that the educational needs of a hyperkinetic, learning disabled child could be met in a 502.4 program prototype proposed by the public school system.

### **Summary of the Case**

Brian attended the public school system during grades 1 through 8. During his grade 1 year, he was diagnosed as hyperkinetic and he experienced learning problems in school and was distractible and frustrated. His problem continued and he was given special education help in the resource room. When he was in grade 7 he was diagnosed to be developmentally dyslexis with an accompanying hyperkinetic syndrome. Education plans were implemented for Brian during grade 7 and the first half of grade 8 (1978-1979 school year.) In June 1979 an education plan was offered for Brian and rejected. This placed him in a 502.3 prototype in the public school. Shortly after this a 502.4 prototype was offered for Brian, the specifics of this were outlined to his mother in the fall of 1979. Brian was placed, by his mother, in the Carroll High School in September 1979 where he remains at the time of hearing, and she believes this is the appropriate program for him for the following reasons:

1. the math program offered in the 502.4 prototype is beneath his ability level
2. the 502.4 program would place him with language disabled students and his language skills are very good.

### **Issues in Dispute**

Whether the education plan proposed by the public school, either as originally written or as subsequently modified, is the least restrictive adequate and appropriate education plan which would meet his special needs.

The school's position is that a 502.3 program at the Junior High School or a 502.4 program at the Junior High School is adequate and appropriate to meet his needs.

The parents' position is that the least restrictive adequate and appropriate program which would meet Brian's special needs is a 502.5 program at the Carroll High School.

### **Evidence Presented**

Psychometric evaluation showed a low average IQ, a significant reading deficit, poor auditory memory and sequencing difficulties in auditory interpretation, poor phonics, poor spelling skills and difficulty with math above basic skill level. Testimony of the psychometrist recommended the Carroll High School program.

Testimony of an educator from M. G. H. described his observations of the 502.4 program offered for Brian. This witness does not feel this program would meet Brian's organizational and independent working needs. He also feels that the other students are too young to allow good peer relationships to develop. Emotional and behavioral support to help Brian with low self esteem are recommended by this witness.



Dean of the Carroll High School program testified about the program which comprises 12 students aged 14-16 years. It is ungraded and has diploma granting authority. He testified that Brian's overall achievement is at 5th grade level and that he needs small groups, individualized programming and a group therapy program.

A pediatric neurologist who evaluated and diagnosed Brian testified that placement in a 502.5 program was appropriate given Brian's lack of basic skills. He stated that the 502.4 program was imaginative and might work however the breakdown in communication between parents and school would prevent this program from working.

The special education director testified about Brian's educational history describing his academic problems in the area of language with emotional problems as high priority. The TEAM believed the 502.3 program was appropriate for Brian for 1979-1980 but offered the 502.4 program because of parental concern about the 502.3 program and the recent M. G. H. testing which showed lower results than the public school testing.

The special needs resource teacher presented testimony about Brian's program since grade 6 stating that the 1979-1980 IEP was consistent with previous years IEP's and allowed room for growth.

The school adjustment counselor testified that Brian was depressed due partly to family problems, and had low self esteem. These are a major inhibitor in his educational development.

Testimony described the 502.4 program as follows:- a full day structured academic program for students who cannot fit into the regular programs. If Brian were to be placed in this program at the date of hearing, he would receive, in small groups, daily math, social studies, language, English, reading, and weekly counseling of therapy. Mainstreaming is available for non-academic subjects when appropriate.

### **Findings and Conclusions**

1. Brian is a child with special needs as defined for the purposes of the law
2. Brian's special needs can be adequately and appropriately addressed in the 502.4 placement in the Junior High School

### **Rationale**

The school identified and addressed Brian's special needs at an early date. The evidence on record indicates that slow steady progress was made by Brian during 1978-1979 school year. Parties agreed in November 1978 that Brian was making adequate progress. When Brian's mother and his neurologist expressed concerns to the school about Brian's progress the school responded by showing willingness to modify the education plan.

Testing conducted in the spring of 1979 by the public school and M. G. H. is basically consistent. Some scores are lower, others are higher.

The 502.4 program addresses Brian's needs in the following ways:

1. there is spatial control, structure and consistency necessary to deal with his academic deficits.
2. continued 1:1 counseling — therapy is provided
3. mainstreaming in non-elective courses and extra curricular activities is provided and transition to a 502.3 program is available if this is appropriate. This is in accord with the mainstreaming philosophy of the law.

The public school showed a willingness to modify the program in accordance with Brian's mother's request.

### **Conclusions**

The public school provided a comprehensively designed program based upon the most current professional evaluations and data available. The 502.4 program has a substantial likelihood of helping Brian, given his needs as defined by the evaluations. The 502.3 program was revised by the school in light of recent testing, to meet Brian's needs.

The public school designed a program that is both adequate and appropriate to meet Brian's special education needs in the least restrictive prototype.

**SCHOOL COMMITTEE, TOWN OF TRURO**  
**v.**  
**COMMONWEALTH OF MASSACHUSETTS**  
**DEPARTMENT OF EDUCATION**  
**DIVISION OF SPECIAL EDUCATION,**  
**BUREAU OF SPECIAL EDUCATION APPEALS**

Massachusetts Superior Court

No. 39756

June 27, 1980

Herbert F. Travers, Jr., Associate Justice of the Superior Court

*Under programs for previous four and one-half years, child and parent has been furnished psychological counseling by a particular psychologist. A new program for the 1979-80 school year specified that such services would be provided by someone else, the change being made principally for financial reasons. The parent rejected this portion of the program, contending that a professional relationship of rapport and confidence had been built up between the child, herself, and the previous psychologist. The Bureau of Special Education Appeals upheld the parent's position, and the LEA filed a petition for review and declaratory relief.*

*HELD, the Bureau of Special Education Appeals has authority under State law and regulations to recommend the engagement of a particular psychologist to perform family guidance and counseling services in a Child's IEP where the special needs of the child require that recommendation for an adequate and appropriate program.*

**Rulings and Order**

This petition for review and declaratory relief concerns a review of an agency decision regarding a special education plan for a child in need of special education under the provisions of St. 1972, c. 766, now G.L., c. 71B.

The factual situation is quite simple. Under previous individual education programs for about four and a half years, the child and his parent had been furnished with psychological counseling by a particular psychologists, Mrs. Rosenberg. As a result thereof, a professional relationship of rapport and confidence was built up between the child and his mother and this particular psychologist. However, in June 1979, a new program for the 1979-80 school year was prepared providing that such services were to be provided by either Mr. Dooley, an adjustment counselor employed by Truro, or the Cape Cod Family and Children Services, Inc., or the Provincetown Dropin Center. The change was principally for financial reasons. The parent rejected this portion of the program related to counseling because she wished Mrs. Rosenberg to continue to provide these services. Thus an adjudicatory hearing was held by the Bureau of Special Education Appeals. The hearing officer upheld the parent's position.

Thus, the question presented to the Court is whether under G.L., c. 30A, s. 14(7) the decision being reviewed is supported by substantial evidence and is free from errors of law.

So far as the evidence is concerned, this Court is limited to the record compiled before the agency. It is the obligation of the Court to affirm the decision if there is substantial evidence in the record to support it. I conclude there is. The record shows that there was overwhelming support for the hearing officer's finding that the counseling component of the individual education program proposed by Truro was not adequate or appropriate to meet the special needs and that continued counseling by Mrs. Rosenberg was necessary to make such program adequate and appropriate.

As to the question relating to errors of law, the problem is more difficult and not free from doubt. The statute and regulations are not specific on this point. However, to reach a correct determination, it is appropriate to focus on what this Court feels is the proper perspective. It is the plaintiff's position that the parent is without right to dictate to the plaintiff as to the particular person who is to carry out a portion of the special program. If this were the issue in the Court's view, it would agree with the plaintiff. However, as the Court views the matter, it was the determination of the agency that because of the peculiar facts found here as to this child and his family, and the special relationship built up with Mrs. Rosenberg, that the program proposing three counseling alternatives was not "best suited to the child's needs" (c. 71B s. 3) and failed to furnish "adequate care of the child" (Ibid.) and this was not an "appropriate education program" (Ibid.). In other words, the proposed program was inadequate. An adequate program required Mrs. Rosenberg (at least for a period of time).



A somewhat similar situation is found in *Amherst-Pelham Regional School Committee v. Department of Education, Mass. Adv. Sch. (1978) 2673*. There the school committee's program proposed that the child spend 57% of his school time in regular classrooms and 43% of his time in special programs. The parents rejected the plan and requested a hearing under s. 3. The parents in the meantime placed the child in Eagle Hill School, a private residential school with a special program for the child. After hearing several witnesses, including the chairman of the core evaluation team and officials of the Eagle Hill School, the hearing officer (and subsequently a substitute decision) concluded that the program proposed by the committee was inadequate to meet the child's special needs, and the only appropriate program proposed at the hearing was the residential program offered at the Eagle Hill School. The Supreme Court, in upholding the decision, stated that ". . . the bureau may recommend a specific alternative placement . . . Moreover, once the bureau has found a school committee proposal inadequate and has recommended an alternative to which the parents agree, the statute neither requires nor suggests further school committee input in the decision making process. Rather the plain implication of s. 3 is that when the parents accept the bureau's program recommendation the school committee must provide that program to the child 'without any unnecessary delay.'"

It is therefore ORDERED that judgment issue:

1. The decision of the defendant agency is affirmed.
2. I declare that the Bureau of Special Education Appeals has authority under General Laws, Chapter 71B, and the regulations promulgated in pursuance thereof, to recommend the engagement of a particular psychologist to perform family guidance and counseling services in a child's individual education program, where the special needs of the child require that recommendation for an adequate and appropriate program.

3 EHLR 552:186

## APPEALS — AN ADVOCATE'S VIEW

Like Sisyphus pushing his stone up the hill, Special Education has been involved in a long and arduous struggle to meet the needs of children who have varying types and degrees of handicaps. And, alas, just as the mythical figure lost his grip near the top of the hill, for all too many youngsters the ball is dropped short of the goal. Certainly we have made progress in providing special education services to youngsters with needs. Children with impairments are rarely relegated to the boiler room and broom closet. But this does not mean that our job is done, or even near completion.

Instead, the most prevalent dissatisfaction with educational programs today is with the provision of sufficient and appropriate special help. Parents and children now are far less concerned with the stigma of being identified as having a handicap than they are with the stereotyping needs on the part of educators in a manner which limits the repertoire of educational responses available to the child. Parents no longer are frightened by the veiled threat that their child may be "a 766 case." More and more parents seem to be genuinely concerned with obtaining for their children the assistance which the child requires in order to make a success of life when schooldays are over.

Now, more than ever before, parents are asking the requirements of the marketplace and are scrutinizing learning goals. They are embarking on their own searches for resources and alternatives and are unaccepting of the claim that no appropriate programs may be available or that the child isn't acceptable for training or education. They are asking the vocational schools to drop their quotas and to modify their programs. They are asking workshops to provide academic instruction. They are asking regular education to respond to the needs of their disabled youngsters.

The goals of graduating from high school and going on to college or finding a job are no longer sufficient. Throughout the state and nation there is a resurgence of interest in competency and in the quality of curricula. Our own state's minimum competency requirements now serve as one guidepost along this path. Trade certification requirements granted by vocational schools serve as another.

As institutions of higher learning more readily accept students with handicaps and as unions and industry move in the direction of equal opportunity for those ready and prepared to do the job, our need to maximize and utilize the potential of handicapped students is rapidly superceding prejudice. And just as it is important to enable these youngsters to obtain the skills they need, it is important for us to recognize that all people do not have the same goals or potentials and, it is the role of special education to enable each child to develop his or her own interests and human potential as fully as any other child.



Parents along with handicapped young folk themselves and advocacy groups were among the first to press for inclusion of the handicapped person in the mainstream. It is of little wonder that parents now are so deeply concerned that their children acquire the skills and develop their potentials so that once in the river, they can swim. They recognize increasingly the importance of supportive services and an appropriate program or their children will be unable to compete in the workplace and will be unable to fulfill their potential.

All of the above may seem divorced from the practical realities of the classroom and of writing the I. E. P. for a child. But it isn't. For, in each year's I. E. P. we see one segment of the progression which hopefully will enable the youngsters to take his rightful and meaningful place as an adult citizen.

Parents, who are, after all, responsible for shaping their children's lives and for helping them to prepare for the future are in a prime position to lend perspective to the matter. They have seen the child grow since birth; they observe the impact of friends; they see the child on the playground and after school. In many instances they are the first to deal with the stomachaches and headaches in the morning and the fears, frustrations and nightmares at night. This is not a claim that parents are always the most skilled as therapists, nor an indication that they are educationally expert to translate diagnostic statements into meaningful educational terms. They are not always right, but they usually know their child better than specialists who deal with the child for a matter of minutes a day or for an occasional diagnostic meeting. Even those parents who experience difficulty in the parenting role are nearly always concerned about their youngster's welfare. They may not be expressive or knowledgeable about theory, but they care.

It is only with very careful consideration and great concern about their child that most parents decide to reject the Educational Plan and enter into the appeals process. In taking this step parents know that they are taking on "the system." They are consciously risking their relationship with the school and its staff by taking this action. They fear, first and foremost, that their rejection of the plan will somehow translate into the denial of services, the rejection of this child and others in the family by teachers, and direct pressure being brought to bear on them by the school's staff. Fortunately, in most cases these fears prove to be unfounded, still, they exist and, sadly, for some there is too much reality in them.

Parents also fear intimidation by professionals more knowledgeable in special education jargon than they. But their biggest worry is for the welfare of their child. They are willing to take risks; often they are angry that they have to do so. They are willing to invest time and resources to see that their child will be able to survive and to grow.

Parents realize that they are not always right. It is this doubt which often leads them to consult an educational consultant or advocate who is outside of the system. Sometimes their concerns stem from the child's unwillingness to attend school. Sometimes there is a vague sense that the child somehow is not progressing according to expectation. Other times there is a clear message given by a teacher or test score that something is seriously amiss. The first job of the educational consultant is to help the parents and the school to communicate regarding the child and to gain a clearer understanding of the needs and how they can be met. Sometimes it is important that the parents have the educator's and specialist's reports translated into lay terms. Occasionally the educators need help in understanding that the child's reaction to a program may be different to that which he feels comfortable articulating to a teacher.

When there is continuing uncertainty regarding the nature or scope of disability or disagreement regarding appropriate educational responses an independent evaluation can be a useful tool to both parties. Unfortunately, many educators and administrators assume a defensive posture when this request is made. They do not see it as an adjunct to their own planning in the best interests of the child, but as a threat to their professional competence. Too often parents report attempts to dissuade them from this request. Parents may be asked to assume the whole financial responsibility or told that the school's budget for this service is used up for the year. More difficult for the parent to respond to, is the school's request that the parents assume the role of professionals and state precisely the names of the tests which they wish to have done and their reasons for these particular test instruments. They are asked to engage in pedagogical and statistical argument for which they are ill equipped, yet somehow feel obligated. When an independent evaluation is allowed, too frequently the school makes the recommendation for the facility and too late the parent finds out that this theoretically independent resource has an ongoing business relationship with the school.

On other occasions the parent may obtain an unbiased evaluation with findings and recommendations which differ from those of the school or which support the findings of the school. Under these conditions, there is a ripe opportunity for rediscussion of the case and resolution of any misunderstandings or disagreements. When the independent evaluator is unsure of the educational steps necessary to deal with a particular disability, the school and educational consultant then can assist in translating the findings into appropriate educational steps. There are situations, too, in which the independent specialist has some firm ideas regarding both diagnostic impressions and remedial or habilitative responses. Such may be the case of



an orthopedist who evaluates the child's needs for physical therapy and physical education. In one case known to the author, the doctor had greater knowledge of the child's condition than did the physical education instructor, but did not know what "adaptive physical education" could and could not respond to in the particular case. Because the communication between the two professionals was incomplete, the physician, not wanting to impinge on the status of the educator, and the educator being unsure of the child's physical problems were exacerbated as muscles were strengthened unevenly. In most cases, the result of the difficulty in communications between the independent evaluator and school staff is not so physically visible. Nonetheless, it is often there, and parents highly sensitive to their child's needs, pick it up quickly. The skilled educational consultant can help to surface these points of tension or misunderstanding, assist in laying specific plans, and in allaying parents' fears.

Even with the best of efforts to resolve disagreements and to transcend them to meet the child's needs as with many other relationships, the differences between the parents' perceptions and request and the school's understanding and plan may be irreconcilable.

Even with a last ditch effort to mediate, cases do still go on to a full administrative appeal hearing. At this level, the guiding factor must be the child's needs. Too often the child gets lost in the compromises struck between parties and in the economic pressures set forth by school committees and translated by administrators. The quantity of services seems sometimes to take on more real parameters than quality and type of help.

At the hearing stage, the sole focus must be on convincing the hearing officer as to the child's needs and the educational program required to meet them. Preparation for this process is at best grueling for the parent, who must bear the brunt emotional stress of the process. In addition, parents also have to bear the burden of the cost of professional witnesses, preparation of evidence, time lost from work, child care, and other services.

Preparation for the hearing must be thorough and, as discussed in previous articles in Appeals News, should include chronological statements, documentation of the child's needs, examination of witness and the proposed program(s).

Perhaps the most striking difference between cases prepared by advocates and those prepared by legal counsel is that strategy figures less into the advocate's thinking. Paramount is the statement of the child's needs and the hope that the hearing officer possesses the wisdom to see the child throughout the process. In the advocate's preparation of a case, clear statement and documentation of need and required methodological response is stressed. Trusting the wisdom of the state in requiring a particular procedure for implementations of Chapter 766 and the development of Individual Educational Plans, the advocate assesses and help the hearing officer to grasp the significance of those goals and objectives, statements of performance level, and methodologies and materials. In the position of educating a hearing officer about education and about the life of a child, the advocate is in many ways in a different position from the lawyer proving compliance with the procedure and arguing evidentiary issues.

Sadly, the expert witnesses are often those whose budgets or jobs are involved in the case and, sadly, too, hearing officers most often do not see the pain of the child who is the subject of the hearing or that of the family which must help the child to grow despite a handicap.

This educator has seen some new tolerance for the handicapped child in the "mainstream" and greater sophistication by school personnel in articulating educational programs.

But, just as the mythical rock rolled again down the hill, the directions have changed in interpreting Chapter 766. We can expect many children to be in its path.

Marsha A. Stevens  
Educational Consulting and Research

*STATISTICAL OVERVIEW*  
September 1979 through August 1980

	SEPT.	OCT.	NOV.	DEC.	JAN.	FEB.	MAR.	APR.	MAY	JUNE	JULY	AUG.	TOTALS
New Cases	92	73	75	49	57	42	92	75	92	152	120	78	997
Mediated/ Agreed	51	31	28	29	43	49	35	42	44	52	23	31	458
Withdrawn/ Postponed/ Other	11	8	8	3	11	3	15	25	19	5	30	4	142
Hearings Held	14	24	30	18	33	28	24	19	24	19	10	12	255

Total number of cases and outcome since the implementation of Chapter 766 for the period, 1974 through August 1980.

Total Number of Appeals:	<u>4,088</u>
Cases Mediated/Agreed	1,769
Withdrawn/Postponed/ Other	540
Hearings Held:	1,091
Cases Pending Independent Evaluations/Mediation/ Hearing	<u>688</u>
<b>TOTAL:</b>	<b>4,088</b>



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